

Proposed Rules

Federal Register

Vol. 73, No. 70

Thursday, April 10, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1980

RIN 0575-AC73

Income Limit Modification

AGENCY: Rural Housing Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Housing Service is proposing to revise the existing income limit structure for Single Family Housing Guaranteed Loan Program (SFHGLP) eligibility. Instead of eligible adjusted income based on households ranging from 1–8 persons according to 7 CFR 1980.345 (a), a two tier income structure consisting of a 1–4 member household and a 5–8 member household is proposed. The new adjusted income limit for the 1–4 member household, for example, would be current adjusted income limit for the 4 member household. The present add-on income limits for larger households will remain unchanged. The present multiple income limits (1–8 persons) are cumbersome, and the proposed consolidation is expected to simplify program delivery as well as allow the agency to serve additional qualified homebuyers. The SFHGLP is in partnership with many State Housing Agencies throughout the United States. The majority of these agencies already maintain a two tier income structure, and this proposed change would allow a seamless integration of the respective programs. This proposal would not apply to other housing programs.

DATES: Comments on this advance notice of proposed rulemaking must be received on or before May 12, 2008 to be assured of consideration.

ADDRESSES: You may submit comments to this rule by any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: David Chaput, Senior Loan Specialist, USDA Rural Development, Single Family Housing Guaranteed Loan Division, STOP 0784 (Room 2250) 1400 Independence Ave., SW., Washington, DC 20250-0784. Telephone: 202-720-1456.

SUPPLEMENTARY INFORMATION:

Classification

This advance notice has been reviewed under Executive Order (EO) 12866 and has been determined to be not significant for the purposes of this EO.

Dated: March 18, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8-7205 Filed 4-9-08; 8:45 am]

BILLING CODE 3410-XV-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2008-0019]

RIN 3150-AG63

Power Reactor Security Requirements; Supplemental Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to add new provisions regarding licensee procedures for responding to notifications of potential aircraft threat

and for the mitigation of the loss of large areas of their facilities due to large fires or explosions. These provisions were previously noticed for public comment in the October 26, 2006 (71 FR 62664) proposed power reactor security rulemaking. The NRC is publishing this supplemental proposed rule notice to obtain additional stakeholder feedback on the additional regulatory text that has been added to these provisions since the original proposed rule was published for comment.

DATES: Submit comments on this proposed rule by May 12, 2008. Submit comments on the information collection aspects on this proposed rule by May 12, 2008.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AG63 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@NRC.GOV If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677. You may also submit comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction

contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to PDR.Resource@NRC.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Schnetzler, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-7883; e-mail: Bonnie.Schnetzler@nrc.gov, or Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-1462; e-mail: Timothy.Reed@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Comments on the Proposed Rule
- III. Section-by-Section Analysis for 10 CFR 50.54(hh)
- IV. Relationship of Proposed § 50.54(hh)(2) to Aircraft Impact Assessment Proposed Rule
- V. Guidance Supporting § 50.54(hh)
- VI. Specific Request for Comments
- VII. Availability of Documents
- VIII. Plain Language
- IX. Voluntary Consensus Standards
- X. Finding of No Significant Environmental Impact: Availability
- XI. Paperwork Reduction Act Statement
- XII. Regulatory Analysis
- XIII. Regulatory Flexibility Act Certification
- XIV. Backfit Analysis

I. Introduction

The NRC published the proposed rulemaking on power reactor security for public comment in the **Federal Register** on October 26, 2006 (71 FR 62664). The proposed rule contained a large number of proposed requirements, including proposed requirements regarding licensee procedures for responding to notifications of potential aircraft threats and for the mitigation of the loss of large areas of their facilities due to large fires or explosions. Those provisions described proposed requirements that were similar to those previously imposed under section B.5 of "Interim Compensatory Measures (ICM) Order," dated February 25, 2002 (EA-02-026, March 4, 2002; 67 FR 9792) (Safeguards Information); specifically, the "B.5.a provision" and the "B.5.b

provision." Proposed section II(k)(1) of Appendix C to Part 73 (the B.5.a or "potential aircraft threats" provision) stated that "Licensees shall implement a 'Threat Warning System' which identifies specific graduated protective measures and actions to be taken to increase licensee preparedness against a heightened or imminent threat of attack." Proposed section II(j) of Appendix C to Part 73 (the B.5.b or "mitigative measures" provision) stated that the licensee "Integrated Response Plan" must "Include specific procedures, guidance, and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities using existing or readily available resources (equipment and personnel) that can be effectively implemented under the circumstances associated with loss of large areas of the plant due to explosions or fires."

During development of the power reactor security final rule, the NRC determined that several significant changes to the proposed rule language would be needed to adequately address stakeholder comments and associated implementation concerns. External stakeholders commented that locating these provisions in Appendix C to Part 73 was not appropriate, given that the actions taken to address these order requirements were not specific to a licensee's security organization but instead encompassed a much broader range of actions across the facility. Although these comments were focused specifically on the mitigative measures provision that was in proposed section II(j) of Appendix C to Part 73, the NRC recognized that the same issues applied equally to the potential aircraft threats provision contained in proposed section II(k)(1) of Appendix C to Part 73. The NRC agrees with the stakeholders comments and is proposing to re-locate the provisions from Part 73 to 10 CFR Part 50. Specifically these provisions would be located in a new paragraph (hh) that would be added to § 50.54 as a condition of the license. This approach was chosen to ensure consistency with the method by which the B.5.b requirements have been implemented for currently operating reactors. (See "Orders Modifying Licenses," 71 FR 36554, June 27, 2006.)

In the process of evaluating these comments, the NRC also considered whether it was appropriate to add additional details and make editorial changes to the rule language. The NRC wants to ensure that the potential aircraft threats and mitigative measures provisions are consistent with the work that was done with licensees over the last six years during implementation of

the ICM requirements. In addition, the NRC was concerned that the lack of specific language would lead to confusion about the NRC's expectations. Therefore, the NRC determined that more detailed rule language would better meet the Commission's regulatory objectives.

While the NRC has clarified the language in these provisions, these clarifications merely reflect the current ICM order requirements as intended by the Commission. In fact, it is the NRC's view that current Part 50 licensees would already be in compliance with these proposed requirements if they were to be codified in a final rule. As such, the language provided in this supplemental proposed rule does not describe "new requirements" using the existing post-9-11 security orders as the baseline of "current requirements." Rather, the NRC views these language changes as improving the specificity of the original proposed requirements. However, because this is a significant change to the proposed rule language on which external stakeholders did not have an opportunity to comment, the NRC concludes that obtaining stakeholder feedback on these re-located provisions through the use of a supplemental proposed rule is appropriate.

II. Comments on the Proposed Rule

As previously discussed, the NRC received several comments on the proposed 10 CFR Part 73, Appendix C provisions (i.e., proposed section II(j) and proposed section II(k)(1)) that were contained in the larger proposed power reactor security rulemaking, and that would now be re-located to proposed § 50.54(hh). These comments are discussed in detail in the following paragraphs.

II.1. Comments on Proposed Section II(j) of Appendix C to Part 73

Comment: Stakeholders commented that, for existing licensees, the NRC is already employing a different and more appropriate regulatory scheme for addressing ICM B.5.b conditions. Commenters noted that the B.5.b requirement is being controlled with a performance-based license condition that is satisfied by voluntary licensee commitments to B.5.b Phase 2 and Phase 3 mitigating strategies. Other commenters noted that these strategies are generally operations procedures that work in conjunction with Emergency Operating Procedures, Severe Accident Mitigation Guidelines, and Extreme Damage Mitigation Guidelines for beyond design base conditions. It was argued that this is an inappropriate

expansion of the security role or the roles of security programs in the hierarchy of plant procedures and processes and that putting specific detail regarding mitigating strategies into the security contingency response plan limits the effectiveness of licensee strategies for dealing with unpredictable plant events. It was commented that the NRC should retain the existing regulatory approach and language.

Response: The NRC agrees that the requirements were not appropriately located in Appendix C to Part 73. The proposed requirements described in that section pertain to a licensee's obligation to protect against design basis threat-related security events. The B.5.b. requirements have always been associated with beyond-design basis events. They do not specifically describe the actions that would have to be taken by security force personnel.

The NRC also agrees that the mitigating strategies requirements should be consistent with the actions that were taken by the NRC to close the B.5.b ICM order issue both in terms of the specific actions required and in regard to the general regulatory approach (i.e., through the use of license conditions). These efforts were reflected in the issuance of orders on June 20, 2006, requiring implementation of key radiological protection mitigation strategies. (See "Orders Modifying Licenses," 71 FR 36554; June 27, 2006). Thus, to address the necessary relocation of these requirements and to reflect consistency with the B.5.b. implementation experience, the NRC proposes that a more appropriate location for the mitigating strategies requirements would be in Part 50. It is the NRC's view that § 50.54 is the appropriate location for these proposed requirements because it describes "Conditions of Licensees."

Comment: Another commenter stated that proposed Part 73, Appendix C does not specify what types of fires or explosions the licensee must prepare for, nor does it specify what areas of the plant are considered particularly susceptible to damage or destruction by fire or explosion. The commenter stated that the provision also does not adequately describe whether, or to what degree, the licensee would rely on off-site first responders, such as local fire departments, to aid in either fighting the fire or maintaining cooling of the core or spent fuel pools in the event of containment loss or breach of a pool. The commenter stated that if this proposed revision is intended to address the potential effects of an aircraft attack on an operating nuclear plant, then the final rule must contain specific

provisions addressing the effects of jet fuel fires on vital areas of the plant, such as the containment dome, spent fuel pool building and control room building. In addition, the commenter said the NRC should require the licensee to demonstrate its ability to deal with significant aircraft debris, such as jet engines, impacting these same vital areas. The commenter stated that one simple solution would be to require licensees to harden the spent fuel pool buildings and control room building so that they are more resistant to an aircraft impact.

Response: As part of the issuance of the ICM order of 2002, the Commission made a determination as to the level of requirements needed to address beyond-design basis scenarios in section B.5.b. The Commission did not intend to limit beyond-design basis scenarios to aircraft attacks but, instead called for the development of mitigation measures to generally deal with the situation in which large areas of the plant were lost due to fires and explosions, whatever the beyond-design basis initiator. This supplemental proposed rule would codify generically applicable requirements similar to those that have previously been required by the ICM order. Accordingly, as with the original section B.5.b requirements, this proposed rule would apply only performance-based criteria so that individual licensees would have to determine the most appropriate site-specific measures that would meet the general performance criteria. Further, the NRC has provided licensees guidance describing parameters that could be used as aids in determining the scope of their site-specific mitigating strategies. Because the Commission has found this approach to be successful, and the proposed § 50.54(hh) requirements reflect consistency with the implementation of the 2002 ICM order requirements to address loss of large areas of the plant due to fire or explosions, the NRC does not believe it is necessary, or even practical, that the prescription suggested by the stakeholder be incorporated into supplemental proposed § 50.54(hh).

Comment: Another commenter noted the draft final Part 52 rule [Note that it is now a final rule: 72 FR 49352] includes requirements for design certification applicants to include a description and evaluation of the design features or strategies for the prevention and mitigation of a specific set of severe accidents. The commenter acknowledged that action should be taken to prevent or mitigate certain specific beyond design bases events including those resulting from large

fires and explosions. To improve regulatory coherency and consistency, the commenter stated that the NRC should address large fires and explosions in the same regulation and in the same manner as other similar beyond design bases events that are already being addressed in the regulations. The commenter noted that the evaluations of the features and strategies that could mitigate or prevent beyond design bases accidents that result from large fires and explosions are performed by engineering and operational groups and NRC reviews are performed by engineering and operations inspectors. Therefore, the commenter stated that it is more appropriate for these matters to be addressed in Part 52 as opposed to Part 73.

Response: The NRC does not agree that the issues that would be addressed by this proposed rule are design-related matters. As explained below, the proposed requirements of § 50.54(hh)(2) would require licensees to develop guidance and strategies to address beyond design basis events. They would not, however, require licensees or designers to make design changes. To the extent that some beyond design basis events such as aircraft impacts could be addressed through the design of the facility, the Commission intends that such requirements would be addressed in the proposed aircraft impact assessment rulemaking also discussed below. Therefore, the NRC believes that the best location for these proposed requirements is with other technical requirements in Part 50.

II.2. Comments on Proposed Appendix C, Section II(k)

Comment: One commenter stated that this is a significant expansion of the integrated response plan required by the Orders. The commenter also stated that this requirement is the subject of other existing regulatory requirements. Thus, the commenter recommended that the NRC delete this provision from the final rule.

Response: The NRC believes that most external stakeholders did not recognize that the potential aircraft threat requirements were co-located in proposed Appendix C to Part 73, section II(k) with the proposed threat warning requirements. The proposed section II(k) requirements (now the proposed 50.54(hh)(1) requirements) were inappropriately located in Appendix C, particularly within the proposed integrated response plan requirements. Further, the language of the proposed rule failed to capture the proposed requirements that the Commission

intended. As with the proposed section II(j) requirements, the NRC concludes that these proposed provisions need additional clarification and re-location to a more suitable regulation.

III. Section-by-Section Analysis for 10 CFR 50.54(hh)

Proposed § 50.54(hh)(1)

The proposed language for § 50.54(hh)(1) would establish the necessary regulatory framework and clarify current expectations to facilitate consistent application of Commission requirements for preparatory actions to be taken in the event of a potential aircraft threat to a nuclear power reactor facility. Because aircraft threats are significant, rapidly evolving events, and licensees may only receive threat notifications a short time before potential onsite impacts, the NRC has determined that it is not prudent for licensees to attempt to identify and accomplish ad hoc mitigative actions in the midst of such circumstances and that such an impromptu approach would unnecessarily limit the effectiveness of onsite and offsite responses. To cope effectively with potential aircraft threats, the proposed rule would require licensees to develop specific procedures, whether in a single procedure or among several procedures that describe the licensee's pre-identified actions to be taken with little or no hesitation when provided with pre-event notification. These pre-event preparations would provide the most effective responses possible to aircraft threats and demonstrate systematic onsite and offsite planning, coordination, communication, and testing.

The proposed rule would require licensees to develop, maintain, and implement procedures for verifying, to the extent possible, the authenticity of aircraft threat notifications to avoid taking actions in response to hoaxes that may adversely impact licensees or the health and safety of the public. Depending on the source of a threat notification, licensees may or may not be able to establish contact with appropriate entities to confirm the accuracy of the threat information received. Consequently, the NRC expects licensees, at a minimum, to contact the NRC Headquarters Operations Center for assistance with verifying callers' identities or the veracity of threat information.

The national protocol for dealing with aircraft threats is designed to be proactive with respect to threat identifications and notifications. However, threat information sources

may not be able to identify specific targets, and given the dynamic nature of potential aircraft threats, any associated notifications to licensees may necessarily be reactive in nature. Additionally, licensees must rely on sources which are external to their control rooms for potential aircraft threat notifications, and updates, when available. As a result, the proposed rule would require licensees to develop, maintain, and implement procedures for the maintenance of continuous communication with threat notification sources because it is imperative that licensees establish and maintain this capability throughout the duration of the pre-event notification period. With such a capability, licensees will be able to receive accurate and timely threat information upon which to base decisions concerning the most effective actions that need to be taken.

The proposed rule would also require that licensees develop, maintain, and implement procedures for notifying all onsite personnel and appropriate offsite response organizations (e.g., fire departments, ambulance services, emergency operations centers) in a timely manner following the receipt of potential aircraft threat notifications. These notifications would ensure that onsite personnel have as much time as possible to execute established procedures and provide offsite response organizations the opportunity to:

- Initiate mutual aid assistance agreements based on the perceived threat;
- Commence the near-site mustering of offsite fire-fighting and medical assistance for sites where these organizations are not proximately located; or
- Mobilize personnel for volunteer organizations or hospital staffs.

During the pre-event notification period, the proposed rule would require licensees to develop procedures to assess plant conditions continuously and take effective actions to mitigate the consequences of an aircraft impact. Examples include maximizing makeup water source inventories, isolating appropriate plant areas and systems, ceasing fuel handling operations and equipment testing, starting appropriate electrical generation equipment, and charging fire-service piping headers. By taking these actions, licensees can better position their sites to minimize the effect on public health and safety.

The proposed rule would also require licensees to develop and implement procedures for making site-specific determinations of the amount of lighting required to be extinguished, if any, to prevent or reduce visual discrimination

of sites relative to their immediate surroundings and distinction of individual buildings within protected areas. For example, it may make sense to turn off all the lights at an isolated site, but not for a site situated in an industrial area, where ambient lighting from surrounding industries is sufficient for target discrimination. Licensees would use centralized lighting controls or develop prioritized routes that allow personnel to turn off different sets of lights depending on available time, when appropriate.

The safety of licensee personnel and contractors is paramount to the successful response and implementation of mitigating measures after an onsite aircraft impact. To the maximum extent possible after a potential aircraft threat notification, the proposed rule would also require licensees to develop and implement procedures for pre-staging appropriate personnel and equipment at locations throughout their sites. Such actions would increase the chance that critical personnel and equipment will be available to address the consequences of an onsite aircraft impact and reduce the need to make improvised decisions during the pre-event notification period. The decision whether to shelter the remaining personnel in-place or evacuate them in response to a potential aircraft threat should be based on the physical layout of the site and the time available to conduct an effective evacuation. Licensees would need to:

- Determine how much time is necessary to evacuate their protected areas,
- Validate the accuracy of that determination using no-notice drills, and
- Incorporate the lessons learned from those drills into their site-specific procedures.

Licensees would also be required to develop procedures to facilitate the rapid re-entry of these personnel and offsite responders into their protected areas to deal with the consequences of an aircraft impact.

Because even the most well-considered plans and procedures do not guarantee that critical on-shift personnel will survive an aircraft impact, the proposed rule would require licensees to develop and implement procedures for an effective recall process for appropriate off-shift personnel. Those procedures would describe the licensee's process for initiating off-shift recalls during the pre-event notification period and for directing responding licensee personnel to pre-identified assembly area outside the site protected areas. When possible, the assembly area

locations should be coordinated with offsite response organizations to facilitate offsite response plans, as well as ensure off-shift licensee personnel will not be unnecessarily prevented from arriving onsite when needed.

Proposed § 50.54(hh)(2)

The proposed language for § 50.54(hh)(2) would require licensees to develop guidance and strategies for addressing the loss of large areas of the plant due to explosions or fires from a beyond-design basis event through the use of readily available resources and by identifying potential practicable areas for the use of beyond-readily-available resources. These strategies would address licensee response to events that are beyond the design basis of the facility. These proposed requirements originated in the ICM order of 2002. Ultimately, these mitigation strategies were further developed and refined through extensive interactions with licensees and industry. The NRC recognizes that these mitigation strategies will be beneficial for the mitigation of all beyond-design basis events that result in the loss of large areas of the plant due to explosions or fires. Current reactor licensees comply with these requirements through the use of the following 14 strategies that have been required through an operating license condition. These strategies fall into the three general areas identified by proposed § 50.54(hh)(2)(i), (ii), and (iii). These strategies are:

Fire fighting response strategy with the following elements:

1. Pre-defined coordinated fire response strategy and guidance.
 2. Assessment of mutual aid fire fighting assets.
 3. Designated staging areas for equipment and materials.
 4. Command and control.
 5. Training of response personnel.
- Operations to mitigate fuel damage considering the following:

1. Protection and use of personnel assets.
2. Communications.
3. Minimizing fire spread.
4. Procedures for implementing integrated fire response strategy.
5. Identification of readily-available, pre-staged equipment.
6. Training on integrated fire response strategy.
7. Spent fuel pool mitigation measures.

Actions to minimize release to include consideration of:

1. Water spray scrubbing.
2. Dose to onsite responders.

The NRC considered specifically including these 14 strategies in the text

of proposed § 50.54(hh)(2). However, the NRC decided that the more general performance-based language in proposed § 50.54(hh)(2) was a better approach to account for future reactor facility designs that may contain features that preclude the need for some of these strategies. New reactor licensees would also be required to employ similar strategies to address core cooling, spent fuel pool cooling, and fission product barrier integrity. The strategies would need to account for, as appropriate, the specific features of the plant design, or any design changes made as a result of an aircraft assessment performed per proposed § 52.500 (aircraft impact assessment proposed rule, 72 FR 56287; October 3, 2007).

The Commission issued guidance (Safeguards Information) to current reactor licensees on February 25, 2005, and additionally endorsed NEI 06-12, Revision 2, by letter dated December 22, 2006. These two sources of guidance provide an acceptable means for developing and implementing the above strategies. The Commission is currently developing a draft Regulatory Guide that consolidates this guidance and addresses new reactor designs.

IV. Relationship of Proposed § 50.54(hh)(2) to Aircraft Impact Assessment Proposed Rule

The proposed § 50.54(hh) would be applicable to both current reactor licensees and new applicants for and holders of reactor operating licenses under either part 50 or part 52. Current reactor licensees have already developed and implemented procedures that would comply with the proposed § 50.54(hh)(2) requirements, and would not require any additional action to comply with these proposed rule provisions. New applicants for and new holders of operating licenses under part 50 and combined licenses under part 52 would be required to develop and implement procedures that would employ mitigating strategies similar to those now employed by current licensees to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire. The requirements described in the proposed § 50.54(hh) relate to the development of procedures for addressing certain events that are the cause of large fires and explosions that affect a substantial portion of the nuclear power plant, and are not limited or directly linked to an aircraft impact. The rule contemplates that the initiating event for such large fires and explosions

could be any number of design basis threat or beyond design basis threat events. In addition, the NRC regards the proposed § 50.54(hh) as necessary for reasonable assurance of adequate protection to public health and safety and common defense and security; this is consistent with the NRC's designation of the orders on which § 50.54(hh) is based as being necessary for reasonable assurance of adequate protection.

In a separate rulemaking, the NRC has proposed to require designers of new nuclear power plants (e.g., applicants for standard design certification under part 52, and applicants for combined licenses under part 52) to conduct an assessment of the effects of the impact of a large commercial aircraft on the nuclear power plant. (72 FR 56287, October 3, 2007). Based upon the insights gained from this assessment, the applicant must include a description and evaluation of design features and functional capabilities to avoid or mitigate, to the extent practical and with reduced reliance upon operator actions, the effects of the aircraft impact. New reactor applicants would be subject to both the proposed requirements of the aircraft impact rule, and the proposed requirements § 50.54(hh). The overall objective of the NRC is to enhance a nuclear power plant's capabilities to withstand the effects of a large fire or explosion, whether caused by an aircraft impact or other event, from the standpoints of both design and operation. The impact of a large aircraft on the nuclear power plant would be regarded as a beyond design basis event. In light of the NRC's view that effective mitigation of the effects of events causing large fires and explosions (including the impact of a large commercial aircraft) should be provided through operational actions, the NRC believes that the mitigation of the effects of such impacts through design should be regarded as a safety enhancement which is not necessary for adequate protection. Therefore, the aircraft impact rule—unlike the proposed § 50.54(hh)—would be regarded as a safety enhancement which is not necessary for adequate protection.

The NRC regards the two rulemakings to be complementary in scope and objectives. The aircraft impact rule focuses on enhancing the design of future nuclear power plants to withstand large commercial aircraft impacts, with reduced reliance on human activities (including operator actions). Proposed § 50.54(hh) focuses on ensuring that the nuclear power plant's licensees will be able to implement effective mitigation measures for large fires and explosions

including (but not explicitly limited to) those caused by the impacts of large, commercial aircraft. Thus, these revisions to the NRC's regulatory framework for future nuclear power plants will provide more regulatory certainty, stability, and increased public confidence.

V. Guidance Supporting § 50.54(hh)

The NRC staff is preparing new regulatory guidance on the requirements in proposed § 50.54(hh). This guidance is intended to provide an acceptable method by which current Part 50 licensees, and future Part 50 and Part 52 applicants and licensees, would be able to implement and comply with the requirements of proposed § 50.54(hh). The regulatory guidance will be issued in draft form for comment following publication of this supplemental proposed rule.

Regarding the guidance supporting § 50.54(hh)(2), the NRC issued Phase 1 guidance (SGI) to current reactor licensees on February 25, 2005, and additionally endorsed NEI 06-12, Revision 2, by letter dated December 22, 2006, with regard to Phase 2 and 3 guidance. These two sources of guidance would provide an acceptable means for developing and implementing the mitigation strategies. The Commission is currently developing a draft Regulatory Guide that consolidates this guidance and is written with a focus on new reactor designs.

VI. Specific Request for Comments

In addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:

1. The NRC recognizes that the actions that would be required by § 50.54(hh) would address beyond-design basis events that in some cases cannot be bounded (as is typically done for design basis events) in terms of the event conditions. As a result, the proposed § 50.54(hh) required actions, though beneficial in many cases, may not be effective for some situations. Given this, the NRC requests specific comments on whether there should be additional language added to the proposed § 50.54(hh) requirements that would limit the scope of the regulation (i.e., language that would constrain the requirements to a subset of beyond-design basis events such as beyond-design basis security events).

2. Under the proposed § 50.54(hh) requirements, the NRC would review applicants' procedures, guidance and strategies related to the proposed § 50.54(hh) as part of its licensing processes, inspection processes, or combination thereof, but these proposed requirements would not be included as part of a new application for a license under Part 50 or 52. The NRC is considering, however, whether it is also necessary or appropriate to also require inclusion of the § 50.54(hh)-related

activities within the NRC staff's review of a combined operating license application or operating license application. This would be accomplished by requiring such materials to be submitted as part of the applicant's application as required by § 50.34 or § 52.80, as applicable. The NRC requests specific comments on what would be the most effective and efficient process to review the applicants' and licensees' procedures, guidance and strategies developed and maintained in accordance with § 50.54(hh)(1) and § 50.54(hh)(2).

VII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852.

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal eRulemaking Portal <http://www.Regulations.gov>, Dockets NRC-2006-0016 and NRC-2008-0019.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at <http://www.nrc.gov/reading-rm.html>.

Document	PDR	Web	ERR (ADAMS)
Proposed power reactor security rulemaking notice	X	X	ML062000122
Proposed power reactor security rulemaking regulatory analysis and supporting appendices	X	X	ML061920112 ML061380796 ML061440013
Proposed power reactor security rulemaking OMB information collection analysis	X	X	ML062830016
Proposed power reactor security rulemaking environmental assessment	X	X	ML061920093
EA-02-026, "Interim Compensatory Measures (ICM) Order" (67 FR 9792)	X	X	ML020520754
EA-06-0137, "Orders Modifying Licenses" (71 FR 36554)	X	X	ML061600023

VIII. Plain Language

The Presidential memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the ADDRESSES caption of this notice.

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are

developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

X. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A

of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. This determination was made as part of the proposed power reactor security rulemaking (71 FR 62664; October 26, 2006), and it remains applicable to this supplemental proposed rulemaking.

XI. Paperwork Reduction Act Statement

The proposed rule published on October 26, 2006 (71 FR 62664) imposed new or amended information collection requirements contained in 10 CFR Parts 50, 72, and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These new or amended information collection requirements were submitted to the Office of Management and Budget for review. The existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0011, 3150–0132 and 3150–0002.

This supplemental proposed rule does not contain new or amended information collection requirements, but relocate information collections addressed in the proposed rule published October 26, 2006 (71 FR 62664) from 10 CFR part 73 (3150–0002) to 10 CFR part 50 (3150–0011). The burden estimated for the relocated information collections will be included in the revised OMB clearance package prepared for the final rule.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this supplemental proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by May 12, 2008 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV and to the Desk Officer, Nathan J. Frey, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011; 0132; 0002), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to Nathan_J._Frey@omb.eop.gov or

comment by telephone at 202–395–7345.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The NRC has not prepared a separate regulatory analysis for this supplemental proposed rule. The regulatory analysis that was prepared to support the proposed power reactor security rulemaking (71 FR 62664; October 26, 2006) remains applicable to these provisions.

XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIV. Backfit Analysis

The NRC has determined that the proposed additions are not backfits as defined by 10 CFR 50.109(a)(1), and therefore a backfit analysis is unnecessary for this supplemental proposed rule. Section 50.109(a)(1) defines backfitting as “the modification or addition to systems, structures, components or design of a facility * * * or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules * * *.” The supplemental proposed rule contains proposed requirements regarding licensee procedures for responding to notifications of potential aircraft threats and for the mitigation of the loss of large areas of their facilities due to large fires or explosions. Though more specific detail is provided in these proposed rules, these provisions would impose requirements on current licensees requirements that are substantially similar to those previously imposed under section B.5 of “Interim Compensatory Measures (ICM) Order,” dated February 25, 2002 (EA–02–026,

March 4, 2002; 67 FR 9792) (Safeguards Information); specifically, the “B.5.a provision” and the “B.5.b provision.” Further, the proposed requirements are consistent with the implementing guidance that has been issued to licensees subsequent to the order. Therefore, these proposed requirements would not constitute backfits as defined by the rule, and no backfit analysis has been prepared.

List of Subjects for 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.54, paragraph (hh) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(hh)(1) Each licensee shall develop, maintain and implement procedures that describe how the licensee will address the following areas if the licensee is notified of a potential aircraft threat:

(i) Verification of the authenticity of threat notifications;

(ii) Maintenance of continuous communication with applicable entities;

(iii) Notifications to all onsite personnel and applicable offsite response organizations;

(iv) Onsite protective actions to enhance the capability of the facility to mitigate the consequences of an aircraft impact;

(v) Measures to reduce visual discrimination of the site relative to its surroundings or individual buildings within the protected area;

(vi) Pre-staging and dispersal of equipment and personnel, as well as rapid reentry of onsite personnel and offsite responders into site protected areas; and

(vii) Recall of site personnel.

(2) Each licensee shall develop and implement guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire, to include strategies in the following areas:

(i) Fire fighting;

(ii) Operations to mitigate fuel damage; and

(iii) Actions to minimize radiological release.

Dated at Rockville, Maryland, this 2nd day of April 2008.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

[FR Doc. E8-7582 Filed 4-9-08; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-168745-03]

RIN 1545-BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-168745-03) that was published in the **Federal Register** on Monday, March 10, 2008 (73 FR 12838) explaining how section 263(a) of the Internal Revenue Code applies to amounts paid to acquire, produce, or improve tangible property. The proposed regulations clarify and expand the standards in the current regulations under section 263(a), as well as provide some bright-line tests (for example, a de minimis rule for acquisitions). The proposed regulations will affect all taxpayers that acquire, produce, or improve tangible property.

FOR FURTHER INFORMATION CONTACT: Merrill D. Feldstein or Mon L. Lam, (202) 622-4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The correction notice that is the subject of this document is under sections 162 and 263(a) of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG-168745-03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG-168745-03), which was the subject of FR Doc. E8-4466, is corrected as follows:

1. On page 12838, column 2, in the preamble, under the paragraph heading “*I. Overview*”, line 9 from the bottom of the column, the language “to the rules relating to unit of property,” is corrected to read “to the rules relating to unit of property and”.

2. On page 12839, column 1, in the preamble, under the paragraph heading “*III. Materials and Supplies under § 1.162-3*”, line 2 from the bottom of the column, the language “material and supplies regulations, the” is corrected to read “materials and supplies regulations, the”.

3. On page 12839, column 2, in the preamble, under the paragraph heading “*III. Materials and Supplies under § 1.162-3*”, first paragraph, line 7, the language “economic useful life of the asset for” is corrected to read “economic useful life of the asset for purposes of”.

4. On page 12840, column 3, in the preamble, under the paragraph heading “*B. Transaction Costs*”, first paragraph, line 7, the language “T.C. 106, 110 (1950), acq., 1951-1 CB 3.” is corrected to read “T.C. 106, 110 (1950), acq., (1951-1 CB 3).”.

5. On page 12841, column 2, in the preamble, under the paragraph heading “*C. De Minimis Rule*”, line 18 from the bottom of the column, the language “is provided in § 1.263A-1(b)(14) of the” is corrected to read “is provided in § 1.263A-1(b)(14) of”.

6. On page 12842, column 1, in the preamble, under the paragraph heading “*VIII. Improvements*”, sixth paragraph of the column, the language “(ii) Adapt a unit of property to a new or different use.” is corrected to read “(iii) Adapt a unit of property to a new or different use.”.

7. On page 12842, column 2, in the preamble, under the paragraph heading “*VIII. Improvements*”, first paragraph of the column, line 3, the language “263A(b), which states that section 263A” is corrected to read “263A(b)(1), which states that section 263A”.

8. On page 12842, column 3, in the preamble, under the paragraph heading “*A. Unit of Property*”, second paragraph of the column, lines 9 through 10, the language “used in certain regulated industries; network assets were excluded from the” is corrected to read “used in certain regulated industries. Network assets were excluded from the”.

§ 1.162-3 [Corrected]

9. On page 12848, column 2, § 1.162-3(c), line 9, the language “sections. For example, see section” is corrected to read “sections. For example, see”.

10. On page 12848, column 2, § 1.162-3(d)(1)(i), last line, the language “unit of property; or” is corrected to read “unit of property;”.

11. On page 12848, column 2, § 1.162-3(d)(1)(ii), last line, the language “taxpayer’s operations; or” is corrected to read “taxpayer’s operations;”.

§ 1.263(a)-0 [Corrected]

12. On page 12851, column 1, § 1.263(a)-3(g)(2)(i)(A), the language “(1) Like-new condition.” is corrected to read “(A) Like-new condition.”.

13. On page 12851, column 1, § 1.263(a)-3(g)(2)(i)(B), the language “(2) Economic useful life.” is corrected to read “(B) Economic useful life.”.

§ 1.263(a)-2 [Corrected]

14. On page 12855, column 2, § 1.263(a)-2(d)(4)(vi), line 8, the language “(including within paragraph (d)(4)(iv)(B))” is corrected to read “(including within paragraph (d)(4)(vi)(B))”.

15. On page 12855, column 3, § 1.263(a)-2(d)(4)(vii) *Example 3.*, line 12, the language “under § 1.162-3(a)(1) and § 1.163-3(d)(1)(iii),” is corrected to